IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

CRL.A.No. 1 of 1999()

CC.806/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, MUVATTUPUZHA

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APPELLANT/COMPLAINANT:

FRANCIS,S/O.JOHN,PUTHUKKUNNATHU HOUSE,
CHELADU POST, KOTHAMANGALAM.

BY ADV. SRI.JOHNSON MANAYANI

RESPONDENT/ACCUSED AND STATE:

1.N.A.KHALID,NEDIYAMALAYIL HOUSE, MARKET POST,
MUVATTUPUZHA.

2.THE STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR
PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.Nos.1 & 115 OF 1999 ()

Dated this the 22nd day of November, 2006

J U D G M E N T

Appellant in these cases was the complainant in C.C.No.806/1996 and C.C.No.812/1996. 1st respondent in Crl.Appeal.No.1/1999 (C.C.No.806/1996) issued a cheque dated 20.6.1996 drawn from the State Bank of India, Muvattupuzha Branch for Rs.60,000/- in discharge of a debt and the above cheque was dishonored for insufficiency of funds. After fulfilling statutory formalities, he filed a complaint under Section 138 of the Negotiable Instruments Act. Similarly he contended that the 1st respondent in Crl.Appeal.No.115/1998 (C.C.No.812/1996) obtained Rs.50,000/- from him and issued a cheque dated 15.6.1996. When the cheque was presented for collection, same was returned for insufficiency of funds and after fulfilling statutory formalities he filed complaint which resulted in C.C.No.812/1996. Case of the accused in C.C.No.806/1996 was that he obtained a loan of Rs.50,000/-

from the complainant on daily collection basis. Accused in C.C.No.812/1996 stood as security and two blank cheques (one each) were given by them as security. He paid the amount in instalments (daily collection basis) and the above two blank cheques given were misused by the complainant. When the notice was issued matter was mediated and settled by DW1, Municipality Chairman. The complainant repeated the version in the complaint but during cross examination he deposed that he is conducting a finance business and the accused obtained loan for business purposes. He denied the suggestion that the accused and one P.M.Basheer (accused in C.C.812/96) approached him and at the time when the accused obtained a loan of Rs.50,000/- from him the accused as well as Basheer gave cheque as security only. He admitted that there was a mediation in the presence of Muncipal Chairman in connection with this transaction.

2. Complainant deposed before the court that he is

running a finance business. DW1 is the Chairman of Muvattupuzha Municipality who was a senior advocate practising in court. He deposed that mediation talk was conducted and when the loan was obtained on daily collection facility of Rs.250/-, sixty instalments of Rs.250/- were already paid and cheque was issued as security at the time of taking loan. That was admitted by both sides before him. The accused in C.C.No.806/1996 also gave evidence as DW2 deposed that he obtained an amount of Rs.45,000/- from the complainant on condition that he will remit back in daily instalments at Rs.250/-. Ext.D1 card was produced by him showing the details of the instalments he paid. It shows that he remitted 60 instalments by 11.8.1995. Total instalments was 200. His friend Basheer (accused in C.C.No.812/1996) also gave a blank cheque as security for this loan. Since he could not continue his business he failed to remit back the balance amount. Ext.P1 cheque was not issued to the complainant as alleged by him. He is having no other dealings with the

complainant. In cross examination he stated that some of the entries in the Ext.D1 card were made by the complainant and he has signed the same. He has not sent any reply to the demand notice, since his idea was to settle the matter out of court. Similar evidence was adduced in the other case also. The trial court came into the conclusion that blank cheque was issued by the accused in C.C.No.806/1996 as security for repayment of loan to be repaid on daily collection basis and part amount was paid and considering Ext.D1 etc. the court found that the contention of the accused that part amount was paid is proved and also believed the evidence of DW2 and found that the cheque was issued not in discharge of a legally enforceable debt but only as a security. Similarly complainant failed to prove that accused in C.C.No.812/1996 has taken any loan. A probable case was set up by the accused by the evidence of DW2. On going through the evidence, I am of the opinion that the view taken by the trial court is a possible view. Following the decision in **M.S.Narayana Menon @ Mani v.**

State of Kerala (2006 (6) S.C.C.39). I am of the view that no interference is required in the order of acquittal and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal Appeal.Nos.1 & 115 OF 1999 ()

JUDGMENT

22nd November, 2006